U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAY 19 2015

FILE #:
PETITION RECEIPT #:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a hospital. On July 23, 2014 it filed a Form I-140, Immigrant Petition for Alien Worker, seeking to permanently employ the beneficiary in the United States as a registered nurse pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). This section of the Act provides for immigrant classification to members of the professions holding advanced degrees or their equivalent whose services are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) defines advanced degree, in pertinent part, as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree .....

In accordance with the regulation at 8 C.F.R. § 204.5(k)(4)(i), the petition was accompanied by a completed but uncertified ETA Form 9089, Application for Permanent Employment Certification. The regulation states, in pertinent part, that "[t]he job offer portion of an individual labor certification [or] Schedule A application . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent . . . ." *Id.*

A Schedule A occupation is one codified at 20 C.F.R. § 656.5(a) for which the U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in such occupations. The current list of Schedule A occupations includes professional nurses. *Id.*

On November 3, 2014 the petition was denied by the Director on the ground that the proffered position does not qualify for Schedule A designation. The Director found that some of the job duties listed on the ETA Form 9089 and on the ETA Form 9141, Application for Prevailing Wage Determination, fall outside the regulatory definition of a "registered nurse." Therefore, the proffered position could not be considered a Schedule A occupation.

The petitioner filed a timely appeal, supplemented by a brief from counsel and additional documentation. We conduct appellate review on a *de novo* basis. *See Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

On March 26, 2015 we issued a Notice of Intent to Dismiss (NOID) the appeal. In the NOID we stated that it does not appear the proffered position requires an advanced degree professional based on information about the educational backgrounds of registered nurses in the DOL's Occupational Outlook Handbook and O*NET Online. We also indicated that the record lacked sufficient evidence of the

petitioner's ability to pay the proffered wage of the job offered, and requested the petitioner to submit copies of its 2014 federal income tax return, or its annual report or audited financial statement for 2014, as well as the Form W-2, Wage and Tax Statement, it issued to the beneficiary for 2014. The petitioner was afforded 30 days to respond to the NOID.

The petitioner did not respond to the NOID within the 30-day period allowed, or at any time up to the date of this decision. If a petitioner does not respond to a request for evidence or a notice of intent to deny by the required date, the petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. *See* 8 C.F.R. § 103.2(b)(13)(i). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Since the petitioner has not responded to the NOID of March 26, 2015, the petition is deniable under the regulatory provisions cited above. Accordingly, the appeal will be summarily dismissed.

ORDER: The appeal is dismissed.